

<b>FOREST SUPPLY, INC.,</b>	)	<b>AGBCA No. 2001-173-2</b>
	)	
Appellant	)	
	)	
<b>Representing the Appellant:</b>	)	
	)	
J. P. Whelan, Esquire	)	
P. O. Box 2688	)	
Coeur d=Alene, Idaho 83816	)	
	)	
<b>Representing the Government:</b>	)	
	)	
Marcus R. Wah, Esquire	)	
Office of the General Counsel	)	
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P. O. Box 7669	)	
Missoula, Montana 59807-7669	)	

**DECISION OF THE BOARD OF CONTRACT APPEALS**

**April 12, 2002**

**Before POLLACK, Administrative Judge.**

**Opinion for the Board by Administrative Judge POLLACK.**

This appeal arises out of Emergency Equipment Rental Agreement Nos. 56-0281-0-35 and 56-0351-0-404 between Forest Supply, Inc., of Coeur d=Alene, Idaho, and the U. S. Department of Agriculture, Forest Service (FS), Bitterroot National Forest, Hamilton, Montana. The agreements were for purposes of the FS renting Forest Supply=s D6D Dozer and Peterbilt transport for fire suppression activities.

The dispute, originally for \$7,237, reduced in the complaint to \$6,480, concerns the daily payments made by the FS. Appellant initially contended that it was on an on-call basis and therefore it was due payment for a 12-hour rather than 8-hour day during the relevant period. In addition, Appellant claimed that it had to hold the Peterbilt transport in a readiness status and thus should be paid for that item on such a basis. The FS contested the claim. It asserted that the equipment was noted as being in staging during the period and under the contract was therefore to be paid at the guaranteed rate and not the rate claimed by Appellant. The FS also contended that Appellant had been paid for a 12-hour day and had received the proper amount allowed by the contract. The FS also contended that to the extent any changes were made, the changes were not made by the Contracting Officer

(CO) nor by any agent with contracting authority.

By letter of September 4, 2001, Forest Supply filed a timely appeal of a CO's decision denying its claim. The Board docketed the matter on September 10, 2001. Thereafter, the Appellant, in the letter forwarding its Complaint, dated October 15, 2001, requested that the appeal be processed under the Board's Expedited procedure, calling for a decision within 120 days of the election.

The Board has jurisdiction over this timely-filed appeal pursuant to the Contract Disputes Act of 1978 (CDA), 41 U.S.C. ' ' 601-613, as amended.

On January 4, 2002, the Board held a telephone conference with counsel for the parties. In that conference the Board and parties reviewed matters concerning whether and where the contract defined the 12-hour day, the actions of FS officials in the field and whether the contractor was in staging status during the disputed period. At the close of the conference, the parties agreed to proceed on the record. The Board then set a schedule for submissions of briefs and affidavits.

By letter of January 25, 2002, the Board was advised by counsel for the Appellant that the appeal had been settled by the parties. Under cover letter of April 8, 2002, the Board received a Stipulation for Dismissal with Prejudice which noted that the matter had been settled on the merits.

### **DECISION**

In accordance with the Stipulation for Dismissal filed by the parties, the Board dismisses the appeal with prejudice.

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**HOWARD A. POLLACK**  
Administrative Judge

**Issued at Washington, D.C.**  
**April 12, 2002**